

IN THE SUPREME COURT OF BANGLADESH  
HIGH COURT DIVISION  
(Special Original Jurisdiction)

**Writ Petition No. 1864 of 2012.**

In the matter of:

An application under Article 102 of the Constitution of the People's Republic of Bangladesh.

And

In the matter of:

**Muntasir Mamun.**

... Petitioner.

-Verses -

Bangladesh and others.

...Respondents.

**Mr. Manzill Murshid, Advocate**

.....for the petitioner.

**Mr. Tapash Kumar Biswas, D.A.G. with**

Mr. Pratiker Chakma. with

Ms. Purabi Saha, A.A.G.

..... for the respondents.

Heard on: 07.05.2015 and

**Judgment on: 24.03.2016.**

**Present:**

**Mr. Justice Quazi Reza-Ul Hoque**

**And**

**Mr. Justice Abu Taher Md. Saifur Rahman.**

**Quazi Reza-Ul Hoque, J:**

The instant Rule was issued on 22.02.2012 calling upon the respondents to show cause as to why a direction should not be given upon the respondents to protect the land of the Central Shahidminar at Dhaka, and/or why such other or further order or orders as to this Court may deem fit and proper, should not be passed.

The facts necessary for disposal of the Rule, as has been stated by the petitioner, in short, is that the petitioner is seeking direction upon the respondents to take measures as per Article 24 of the Constitution of Bangladesh the petitioner seeks to bring this application by invoking Article 102 of the Constitution as a public interest litigation for a direction upon the

respondents to take necessary steps to protect the land of the central Shaheed Minar at Dhaka.

In the year of 1952, voice of the people raised against the conspiracy to declare Urdu as State language of the then East Pakistan instead of Bangla the mother language of the majority citizen of the country. During that time on 21<sup>st</sup> February the police open fire at the gate of Dhaka Medical College on the procession organized by the students of the Dhaka University and many died including Rafik, Shafik, Salam, Barkat and Jabbar. Based on the language movement of 1952 the people of this country became successful to save their mother language Bangla as state language not only that the language movement also is treated as one of the historical events. It is stated here that the place of central Shahid Minar situated at the gate of Dhaka Medical College where the heroes of language movement died. So the place of Shaheed Minar is very much respectful to us as well as it is carrying the history from past to future. It is also stated that taking into consideration of the role of 21<sup>st</sup> February to protect mother language, the internationally community now is observing international mother language day. It may be mentioned here that at this stage the importance of central Shahid minar is increasing day by day, so it is necessary to protect the property. Though the place is historical important place but the respondents failed to take measures to protect the property of that as per the provision of law, as it involves great public importance so this petition may be treated as public interest litigation.

A report was published in the daily Kaler Kontho on 20.02.2012 on the head line that বেড়ে উঠেছে কথিত মাজার হুমকিতে শহীদ মিনার ' it was reported in the newspaper that a vested group has occupied the land of the Shaheed Minar under the umbrella of a Majar. Even they are planning to construct a high rise construction which may caused damage of the sanctity of the central Shahid Minar. It was also reported that some employee of Dhaka medical College is using the place for their own interest by way of ex-ploiting the religious sentiment of people (annexure-A).

It is stated here that disregard to provision of law and failure to ensure proper implementation of laws, caused enough disrespect to the historical place of central Shahid Minar. Under these circumstances the respondents are legally bound to protect the land of the historical place such as the place in where the heroes of language movement devoted their lives to protect Bangla as mother language.

The respondent No. 6 contested the Rule by filing affidavit-in-opposition contending *inter alia* that the petitioner filed this writ petition before this Court seeking a direction upon the respondents to protect the land of the Central Shaheed Minar at Dhaka and remove/demolish all illegal structure situated within the land of Central Shahid Minar excluding an old graveyard.

On 23.02.2012 after receiving the Rule and order dated 22.02.2012 in compliance to the said order the respondents Nos. 4 and 6 immediately communicated to other related Government authorities, as well as,

University of Dhaka and thereafter on 25.02.2012 at 10:00 A.M. eviction/demolition process was started at the Central Shahid Minar premises and surroundings areas with the help of an Executive Magistrate, Dhaka in presence of the Proctor, Estate Manager and Senior Executive Officer of Dhaka University and Executive Engineer, Urban Executive Engineer of the City Corporation and representative of Public Works Department (P.W.D) and Officer-in-Charge, Shabag Police Station in the said eviction demolition process and near about twenty following illegal structures were demolished:-

- i. Up to 7 small big houses,
- ii. Up to 4 toilets/ bathrooms.
- iii. Kitchen.
- iv. Entrance gate of the Shrine.
- v. Two rooms for imam of a mosque and the caretaker of the Shrine.
- vi. Garden water tank and other attached wall secured by barbed wire.

And evicted illegal occupants of the said structures. After completion of the said eviction/demolition process, the twenty Katha land was then physically handed over to the Estate Manager of the Dhaka University upon receipt of an acceptance letter dated 25.02.2012 issued by the said Estate Manager.

It is stated that a comprehensive survey was carried out by the concerned surveyor of officer of the Assistant Commissioner (Land), Kotwali Circle, Dhaka, as well as, Public Works Department.

The respondent Nos. 4 and 6 in compliance to the Court's order dated 22.02.2012 also collected the relevant land title documents namely Khatians of R.S.A and Dhaka City Survey from the office of the Assistant Commissioner (Land), Kotwali Circle, Dhaka and as per survey report prepared by the office of the Assistant Commissioner (Land), Dhaka, it was found that there is no private property owned by any individual near side Central Shahid Minar as per the said records. The whole surroundings area belongs to Dhaka Medical College, Dhaka University and BUET respectively according to the said survey report in the Khatian No. 17, Dag No. 5309 measuring 2.3292 acres land was mutated in the name of Dhaka City Corporation whereas in the opinion column it is recorded as Central Shahid Minar as occupant. Actually main structures of the Central Shahid Minar is situated in the aforesaid dag number but in the South West corner of the Central Shain Minar a graveyard is situated upon 0.1545 acres of land out of 3.6940 acres under Khatian No. 5 Dag No. 5312, which is recorded in the name of Health Department, Government of Bangladesh. Furthermore, the caretaker of the said grave could not produce any document regarding ownership of the said grave and attached houses and structures thereon thus the grave and attached structures are situated on the Government land.

Upon submission of this affidavit-in-opposition submitted by the respondent No. 6 the petitioner through filing a supplementary affidavit at the time when the matter was taken up for hearing the respondent No. 6 has filed affidavit in opposition. In the affidavit in opposition it was stated that all the structures made in the land of Shahid Minar has been evicted/demolished. It

was also stated that as per the record the land has been record in the name of Government. After receiving a copy of the affidavit in opposition the learned lawyer visited the area of the Shahid Minar and found that the order of this Court dated 22.02.2012 has not been fully complied with. It was also found that some structures including the grave is still there and some photographs were taken through which it is evident that some illegal structures are still there (annexure- B).

Mr. Manzill Murshid, the learned Advocate appearing for the petitioner submits that disregard to provision of law and failure to ensure proper implementation laws, caused enough damage to the land of the Central Shahid Minar Under and these circumstances the respondents are legally bound to protect the land of the historical place such as the place in where the heroes of language movement devoted their lives.

He again submitted that the duty and responsibility vested upon the respondents to serve the people and initiate lawful steps and the respondents are also duty bound to obey the provisions of law but the respondents have failed to perform the duties and responsibility as vested upon them and also failed to protect the above mentioned historical place, which is illegal under these circumstances the respondents are liable to take immediate steps to protect the land of the Central Shahid Minar.

He further submitted that such disregard to laws and legal provisions and failure to ensure proper implementation of laws have caused enough damage to the land of the Central Shahid Minar and as such the respondents are required to be directed to protect the above land of the historical places in accordance with law.

As per Article 24 of the Constitution of Bangladesh the respondents are duty bound to adopt measures for the protection of historic importance place or interest Central Shahid Minar at Dhaka established in a place where many sacrificed their lives in order to protect mother language Bangla. It is historical place. Hence a direction should be given to protect the land of the Shahid Minar.

Mr. Tapash Kumar Biswas, the learned Deputy Attorney General appearing for the respondents reiterates the same statements and adopts the statements made in their affidavit-in-opposition and submissions.

On perusal of the submission of the learned Advocates of both the sides, the writ petition, affidavit-in-opposition, supplementary affidavit and the annexed documents, with photograph it is absolutely clear that within the precinct of the Central Shahid Miner there is a grave of a person by name of f£l qkla -am n;q about whom there is no history as to when and how this grave was established and the so called Mazar was also made. Although the respondent No. 6 has submitted compliance but it is very evident to note that such compliance is only shown in black and white but practically the direction of the Court dated 22.02.2012, has not been fully carried out.

Now, February 21 is observed as the international mother's language day. This day is the culmination of a serious of protest and events that took place

between 1948 and 1952. After the independence of Pakistan in 1948 the ruling authority of Pakistan largely comprised of Urdu and Punjabi speaking people recognized Urdu as the State language of Pakistan and tried to impose it on the Bangla-speaking majority people. Not only that they even started writing Bengali in Arabic/ Urdu script and denied the demand of the Bangalis for the recognition of Bangla as the State language of Pakistan. In 1952 protests erupted throughout East Pakistan against the imposition of Urdu and for the recognition of Bangla as the State language of Pakistan. The ruling authority imposed section 144 all over East Pakistan, now Bangladesh, but the protest grew stronger. The students, politician and general masses brought out a procession around Dhaka University area defying curfew imposed under section 144 of the Criminal Procedure Code, the police charged fire on the procession and some of the protestors were killed, amongst whom Rafiq, Jabbar, Salam, Barkat, and Shafiq met martyrdom. Finally, Bangla was recognized as the State language. Since then, the day is observed throughout the country with solemnity and due homage.

21<sup>st</sup> February, is recognized as International Mother Language Day as was proclaimed by the General Conference of the United Nations Educational, Scientific and Cultural Organization (UNESCO) in November 1999 (30C/62). On 16 May 2009 the United Nations General Assembly, in its resolution A/RES/61/266, called on its member states "to promote the preservation and protection of all languages used by people of the world". In the resolution, the General Assembly proclaimed 2008 as the International Year of Languages to promote unity in diversity and international understanding through multilingualism and multiculturalism. The resolution was suggested by Mr. Rafiqul Islam, a Bengali living in Vancouver, Canada. He wrote to Mr. Kofi Anan, the then Secretary General of the United Nations on 9 January 1998 asking him to declare an International Mother Language Day and he proposed the date as 21 February on the pretext of 1952 killing in Dhaka on the occasion of Language Movement.

The recognition of the language day and the proclamation of the observance of the day internationally is very significant. UNESCO's recognition is not simply a recognition of the language movement, but it recognizes the birth right of every nation and its citizens and races to speak in their own language. The proclamation also portrays recognition that would help to preserve all the languages of the world and that diversity of languages is important to maintain cultural identity and their distinction.

Bangladesh is the only nation of the world to sacrifice lives for mother tongue. International Mother Language Day by the UNESCO is a glorious recognition of Bangladesh's history and its achievements. This day, 21<sup>st</sup> February, highlights the importance of linguistic identity for which this nation's achievement has been duly honoured and accoladed with international acceptance.

All the processions, including the procession against the Pakistani authority began from Dhaka University's Amtoli, now Dhaka Medical College's Gate.

A monument at that time was built at the place where the agitation began, known as Shaheed Minar. During 1971 that Shaheed Minar was bulldozed to dust by the Pakistan Army, however, after the Independence of Bangladesh that has been built again where on every 21<sup>st</sup> February nation pays respect to its martyrs of the language movement. It's sanctity is no less than any other monument of the country, as such, any encroachment upon its land and its sanctity must be repelled and therefore the illegal occupants as has been ordered earlier by this Court, except preserving the grave, be evicted.

In the result, the Rule is made absolute and therefore all structures relating to the so called Mazar excluding the old grave be demolished keeping the grave with sanctity be maintained and eviction be done within 72 hours from the receipt of the judgment and order.

Let this judgment and order be maintained as a continue mandamus.

Communicate the order at once.

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